

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2007-231-T - ORDER NO. 2007-836  
NOVEMBER 20, 2007

IN RE: Application of Shamrock Moving and	)	ORDER GRANTING
Storage, Inc. for a Class E (Household Goods)	)	CLASS E CERTIFICATE
Certificate of Public Convenience and	)	
Necessity	)	

This proceeding before the Public Service Commission of South Carolina (“Commission”) arises under the authority of S.C. Code Ann. §§ 58-23-210, 58-23-260, and 58-23-330 and is governed by 26 S.C. Code Ann. Regs. 103-130 through 103-134, and 103-821. The purpose of this proceeding is to consider the Application of Shamrock Moving and Storage, Inc. (“Shamrock,” or the “Applicant”), seeking a Class E Certificate of Public Convenience and Necessity, as defined by 26 S.C. Code Ann. Regs. 103-210(1), for statewide authority to move household goods.

Shamrock filed its application on June 13, 2007. The Commission’s Docketing Department instructed the Company to publish a Notice of Filing in newspapers of general circulation in the service area desired. The Notice of Filing, which was published as instructed, informed the public as to how to file pleadings to participate in the proceedings on the Application. No Petitions to Intervene or protests were received.

**APPLICABLE LAW**

1. S.C. Code Ann. § 58-23-20 (Supp. 2006) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-590(A) (Supp. 2006) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

3. S.C. Code Ann. § 58-23-590(C) (Supp. 2006) provides:

The Office of Regulatory Staff must issue a common carrier certificate or contract carrier permit of public convenience and necessity, upon order of the commission, if the applicant proves to the commission that:

(1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and

(2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirement of public convenience and necessity. The determination that the proposed service is required by the public, convenience and necessity must be made by the commission on a case-by-case basis.

4. 26 S.C. Regs 103-102(1)(Supp. 2006) defines “Certificate of PC&N” as the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

5. 26 S.C. Regs. 103-102(5) (Supp. 2006) defines “Common Carrier by Motor Vehicle” as “any person<sup>1</sup> which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976.”

6. A “Class E Motor Carrier” is defined in 26 S.C. Regs. 103-114 (Supp. 2006) as “a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

7. 26 S.C. Code Regs. 103-133 (Supp. 2006) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

- (1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of

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<sup>1</sup> 26 S.C. Code Regs. 103-102(15) defines “person” as “any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.”

household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses. If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S. safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

**EVIDENCE OF RECORD**

The hearing on the Application was held on October 11, 2007, at 10:30 a.m. in the offices of the Commission. The Honorable G. O'Neal Hamilton, Chairman, presided. Shamrock was represented by Benjamin P. Mustian, Esquire. The Office of Regulatory Staff ("ORS") was represented by Shealy Boland Reibold, Esquire, and Jeffrey M. Nelson, Esquire.

Mr. Mike Bower testified on behalf of the Applicant Shamrock. Mr. Bower testified that he is a manager of Shamrock and will be overseeing its South Carolina operations. He testified that Shamrock has operated a moving and storage business in New Jersey for over seven years and in Florida for over four years. Shamrock currently possesses authority to conduct intrastate moves in New Jersey and Florida and interstate moves. Mr. Bower testified that he has personally been involved in the moving business several years and that his employment has involved various responsibilities from performing moves to management of the business. Therefore, Mr. Bower stated that he has the experience and the ability to operate a successful moving and storage business in South Carolina. His testimony indicated that Shamrock is operating a solvent and profitable business, is not subject to any outstanding judgments, and is in good standing with both the United States Department of Transportation and the Florida Department of Agriculture and Consumer Services which has the authority to oversee household goods movers in that state. The Applicant, with the consent of all parties of record, filed a late-filed exhibit demonstrating that the Company was also in good standing with the New Jersey Division of Consumer Affairs. Additionally, he testified that Shamrock has

received a satisfactory rating from the State Transportation Police. Mr. Bower stated that he was familiar with and agreed to operate Shamrock's business in compliance with all statutes and regulations, including safety regulations in South Carolina. Shamrock also intends to join the South Carolina Tariff Bureau and charge the approved rates and comply with the terms set forth therein. He additionally provided evidence of Shamrock's fitness, willingness, and ability to provide the services for which it seeks a Certificate of Public Convenience and Necessity by describing the Company's incorporation, insurance, and equipment.

Mr. Bower further testified that, in analyzing the appropriate area in which to expand Shamrock's moving and storage business, he examined the South Carolina location and determined that the real estate market, the population, and the potential for business growth demonstrated a need for another household goods mover in the state.

Mr. Len Fletcher also testified for the Applicant. Mr. Fletcher is a real estate broker with Re/Max in the Greenville area. Mr. Fletcher has been involved in the real estate market for approximately 17 years, exclusively in South Carolina for sixteen years, and has extensive experience in this field. In addition to representing clients in the purchase and sale of homes, Mr. Fletcher provided testimony to the Commission that he assists clients with the moving process and has referred clients to various household goods movers. Mr. Fletcher stated that the real estate market in South Carolina supported the need for another household goods mover. He further testified that, based upon his experience assisting clients, it was his opinion that the current number of household goods movers in South Carolina was insufficient to meet the present need.

Mr. L. George Parker testified on behalf of the Office of Regulatory Staff. Mr. Parker noted that he visited the Shamrock place of business and inspected the moving vehicles and equipment. Mr. Parker took pictures of the Shamrock equipment and verified that the equipment, including the vehicles, were in safe and good operating order. Mr. Parker further testified that, based on his inspection, the Applicant appeared fit, willing, and able to move household goods.

S.C. Code Ann. 58-23-590(C) (Supp. 2006) states that the Commission shall issue a common carrier certificate of public convenience and necessity if the applicant proves to the Commission that: (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of the chapter and the Commission's regulations and (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity. The Applicant presented testimony from Mr. Len Fletcher who testified that there is a need for another household goods mover in South Carolina and that the current number of movers is insufficient to meet the present demand. Further, Mr. Bower stated that, based upon his analysis, the business market and demand for household goods moving services in South Carolina supported the need for additional household goods movers. We find the evidence of the present state of public convenience and necessity provided by the Applicant to be credible.

Based upon the record before the Commission and the statutory requirements, along with the guidelines contained in the Commission's regulations, we conclude that the Applicant has demonstrated that it is fit, willing, and able to operate as a household

goods mover between points and places in South Carolina pursuant to S.C. Code Ann. § 58-23-330 (Supp.2006) and 26 S.C. Code Ann. Regs. 103-133 (Supp.2006), and that the public convenience and necessity is not already being served by existing authorized service. Further, we find there is sufficient evidence to grant the Application and therefore grant to Shamrock a Class E Certificate of Public Convenience and Necessity for the movement of household goods as defined in R. 103-210(1) between points and places in South Carolina. This grant of authority is contingent upon compliance with all Commission regulations as outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Shamrock Moving and Storage, Inc. for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved for the Applicant to transport household goods between points and places in South Carolina.
2. The Company shall file with the Office of Regulatory Staff the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and by 26 S.C. Code Ann. Regs. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 23A S.C. Code Ann. Regs. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.
3. Upon compliance with S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Regs.



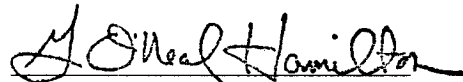
Vol. 26 (1976), as amended, a Certificate shall be issued by the Office of Regulatory Staff authorizing the motor carrier services granted herein.

4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

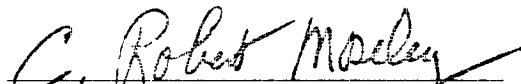
5. Failure of the Applicant either (1) to complete the certification process by complying with the Office of Regulatory Staff requirements of causing to be filed with the Commission proof of appropriate insurance and an acceptable safety rating within sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, may result in the authorization approved in the Order being revoked.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
G. O'Neal Hamilton, Chairman

ATTEST:

  
C. Robert Moseley, Vice Chairman

(SEAL)